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In the Supreme Court of the United States

OCTOBER TERM, 1924

No. 376

OLD DOMINION LAND COMPANY, PLAINTIFF IN ERROR

v.

UNITED STATES OF AMERICA

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

I

STATEMENT

The general question is whether 43.10 acres of land at Newport News was properly condemned for public use and the compensation of $129,700 (Tr. 55) awarded by the jury was just.

Under leases the Government already occupied the land as a site for Quartermaster warehouses on which it had placed improvements aggregating $1,995,000. Improvements representing a cost of $1,522,000 (Tr. 7) remained and included 21 warehouses (Tr. 41), railroad switches and sidings and other structures (Tr. 101). In 1919 efforts to ac-

quire title to the site by direct purchase failed because the price demanded by the owner was excessive and unreasonable. The Secretary of War recommended condemnation proceedings then (Tr. 7). Further action toward the procurement of title from the funds then available was stayed by the provisions of the Army Appropriation Act of July 11, 1919 (41 Stat. 128) (Tr. 8).

Express authority for the acquisition of these lands was contained in the Act approved March 8, 1922 (42 Stat. 418) as an amendment to the foregoing Army Appropriation Act of July 11, 1919.

On July 1, 1918, the Government leased the three vacant tracts from the Land Company for one year with the right to renew to include the period of the Great War and the time necessary thereafter for the return of the soldiers. (Tr. 8, 101.) Quartermaster warehouses were constructed and used on the site in connection with the embarkation and debarkation of the soldiers and for an Army supply base. The leases were renewed until July 1, 1922. (Tr. 101.)

The leases also provided that all buildings and other improvements upon the land should be and remain the property of the Government, with the right of removal during the term of the leases and within 30 days after the expiration of the term or any renewals thereof. (Tr. 101.) While the leases were still in force, the Government offered further to renew for the period July 1, 1922, to June 30,

1923, upon the same terms (Tr. 16–19), but the Land Company absolutely refused (Tr. 14, 101), and on June 30, 1922, gave notice that " the United States has thirty days in which there shall be removed from the premises buildings and other improvements fixed to or erected or placed in or upon the premises by the United States; after the expiration of this thirty-day period the right of the United States to go in, on, or over the premises or to remove any buildings, improvements, structures, or fixtures in or upon the premises terminates and thereupon all existing rights of the United States will have been extinguished." (Tr. 13.)

General Carson, Quartermaster General, acting for the War Department, on July 19, 1922 (Tr. 37), sought again to acquire the lands by purchase (Congress on March 8, 1922, having enacted new legislation authorizing such acquisition), and by letter offered $3,000 per acre. The Land Company advised, on July 24, 1922, " that the Company would stand upon its legal rights," that a meeting of the Board of Directors had been called for the 28th instant " to consider what action should be taken with respect to your offer " and that the price offered was regarded " as very much less than its value " (Tr. 39). On July 28, 1922 (only one day before the expiration of the 30-day period within which the Government might remove the valuable improvements), the Land Company de-

clined to accept the offer (Tr. 39), and on July 31, 1922, by letter so notified General Carson (Tr. 39).

On July 21, 1922, the Secretary of War addressed an official communication to the Attorney General, emphasized the necessity for " immediate action " (Tr. 7–9), and requested the latter " to institute condemnation proceedings before July 30, 1922, to acquire the fee simple title to the land," and " to take such other steps as are necessary to protect the Government's interests." The Attorney General directed the filing of the petition for the condemnation of the land, and on July 29, 1922, the petition was filed (Tr. 4, 1).

On February 14 ,1923, the defendant filed a motion to dismiss the proceedings (Tr. 21) setting forth the petition failed to show (*a*) that any officer of the Government had been authorized to acquire the lands for public use; (*b*) the object of the proceedings; (*c*) that it was necessary and advantageous to the Government that the lands should be acquired by condemnation; (*d*) that the Secretary of War had any authority to determine that the lands are needed for the use of the Naval forces; (*e*) that the alleged use was not set out with sufficient particularity to enable the court to determine whether it was such a public use as was authorized by law. (Tr. 21, 22.)

With a full opinion (Tr. 40) in which all of the objections were considered the District Court entered an order overruling the motion. (Tr. 6, 7.) The power of the Government to maintain the pro

ceeding and the regularity thereof were in all respects sustained. (Tr. 40, 41.) On September 15, 1922, the Land Company had filed an answer in which after setting up much detail matter it sought more completely to raise and preserve the questions. (Tr. 25.) On April 26, 1923, the case came on for hearing before District Judge Groner and a jury which was called at the request of the Government to ascertain the just compensation. The jury returned the verdict which the District Court confirmed. (Tr. 56.) Bill of exceptions was filed and on writ of error the Circuit Court of Appeals (Circuit Judges Woods, Waddill and Rose) unanimously affirmed. (Tr. 100; *Old Dominion Land Co.* v. *United States,* 296 Fed. Rep. 20.)

II

THE STATUTES

CONDEMNATION OF LANDS FOR SITES OF PUBLIC BUILDINGS ACT (25 Stat. 357)

Chap. 728.—AN ACT TO AUTHORIZE THE CONDEMNATION OF LAND FOR SITES OF PUBLIC BUILDINGS, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses he shall be, and hereby is, authorized to acquire the same for the United States by condemnation, under judicial

process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the United States circuit or district courts of the district wherein such real estate is located, shall have jurisdiction or proceedings for such condemnation, and it shall be the duty of the Attorney General of the United States, upon every application of the Secretary of the Treasury, under this act, or such other officer, to cause proceedings to be commenced for condemnation, within thirty days from the receipt of the application at the Department of Justice.

SEC. 2. The practice, pleadings, forms and modes of proceeding in causes arising under the provisions of this act shall conform, as near as may be, to the practice, pleadings, forms and proceedings existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of the court to the contrary notwithstanding.

Approved, August 1, 1888.

ARMY APPROPRIATION ACT, APPROVED JULY 11, 1919
(41 Stat. 104, 128)

Chap. 8.—AN ACT MAKING APPROPRITIONS FOR THE SUPPORT OF THE ARMY FOR THE FISCAL YEAR ENDING JUNE 30, 1920, AND FOR OTHER PURPOSES

* * * * *

That no part of any of the appropriations made herein nor any of the unexpended balances of appropriations heretofore made for the support and maintenance of the Army or the Military Estab-

lishment shall be expended for the purchase of real estate or for the construction of Army camps or cantonments except in such cases at National Army or National Guard camps or cantonments which were in use prior to November 11, 1918, where it has been or may be found more economical to the Government for the purpose of salvaging such camps or cantonments to buy real estate than to continue to pay rentals or claims for damages thereon, and except where industrial plants have been constructed or taken over by the Government for war purposes and the purchase of land is necessary in order to protect the interest of the Government. (See, Amendments 41 Stat. 278, 453.)

ACT APPROVED MARCH 8, 1922 (42 Stat. 418) TO AMEND ARMY APPROPRIATION ACT OF JULY 11, 1919

Chap. 100.—AN ACT TO AMEND THE ARMY APPROPRIATION ACT, APPROVED JULY 11, 1919, SO AS TO RELEASE APPROPRIATIONS FOR THE COMPLETION OF THE ACQUISITION OF REAL ESTATE IN CERTAIN CASES AND MAKING ADDITIONAL APPROPRIATIONS THEREFOR.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the Army Appropriation Act, approved July 11, 1919, making unavailable, with certain exceptions, appropriations for the support of the Army or the Military Establishment for the purchase of real estate, as amended by the Act approved February 28, 1920 (Public Numbered 151, Sixty-sixth Congress), be, and the same are hereby, further amended so as to authorize completion of the ac-

quisition of the real estate hereinafter specified in respect whereof requisition notices had been served or given before July 11, 1919, under section 10 of the Act approved August 10, 1917 (Fortieth Statutes at Large, page 276), or in respect whereof agreements had been made for purchase thereof, or proceedings begun for condemnation thereof. All unexpended balances of any appropriations heretofore made for any of such purposes are hereby directed to be covered into the Treasury. For the purpose of carrying out the provisions of this section the following amounts are hereby authorized to be appropriated, to wit: * * * for quartermaster warehouses, Newport News, Virginia, $223,670; * * *.

SEC. 3. That the Secretary of War be, and he is hereby, authorized and directed, at the time of the expiration of the leases now held by the War Department covering the several tracts of land hereinbefore described, to enter into new contracts for the lease of such portions of said land as he deems necessary, and for such length of time as he deems advisable, to enable the War Department to remove all Government buildings and other property now located on said premises : * * * That the owners of said tracts of land, prior to the dismissal of all legal proceedings now pending, shall enter into contract and agreement with the War Department covering all rights of removal of Government property after the expiration of the lease, if not removed before the expiration of the lease; and

also for the protection of the Government in relation to any water mains or sewer pipes which may cross any portion of said land. He is authorized to approve judicial or administrative awards heretofore made and to have new awards made in respect of any such interest or estate in said lands as can not be purchased at a reasonable price. If the amount of the award in any case be accepted by the owner or owners in full satisfaction, payment of such award with interest thereon at the rate of 6 per centum per annum from the date of said award is authorized to be made to the owner or owners of the property upon receiving good and sufficient deeds conveying the title of said lands to the United States. If the amount of the award be not accepted in full satisfaction, the Secretary of War is authorized to pay to the owner or owners of the premises 75 per centum of the amount of the award upon the execution of good and sufficient deeds conveying title thereof to the United States without prejudice to his or their right to recover any balance due; and the owner or owners of the premises shall have the right to sue in the district court of the United States for the judicial district in which the land lies for the difference between the amount so paid and the just value of the property to which the owner or owners thereof is entitled as determined in said suit, whether the value so determined be more or less than the amount of the award: *Provided, however,* That any addition to the value of the premises resulting from the improvements

thereto or in the vicinity thereof made by or at the expense of the United States shall be excluded from the sum paid to or recovered by the owners. Where the owner or owners of the property refuse or neglect to execute such conveyance and a reasonable time therefor has in the judgment of the Secretary of War expired, or where their title to the premises is in doubt, the Secretary of War may cause condemnation proceedings to be instituted for the acquisition of the title, in which proceedings any addition to the value of the premises resulting from improvements thereto or in the vicinity therefor made by or at the expense of the United States shall not be included in the award to the owners. The Secretary of War is authorized and directed to pay from the funds made available by this Act the amount awarded by the court in either of the proceedings aforesaid, together with such expense of the proceedings as the court may adjudge to be properly chargeable to the United States.

DEFICIENCIES APPROPRIATION BILL, APPROVED JULY 1, 1922 (42 Stat. 767, 777)

Chap. 258.—AN ACT MAKING APPROPRIATIONS TO SUPPLY DEFICIENCIES IN APPROPRIATIONS FOR THE FISCAL YEAR ENDING JUNE 30, 1922, AND PRIOR FISCAL YEARS, SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR ENDING JUNE 30, 1922, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply deficiencies in

appropriations for the fiscal year ending June 30, 1922, and prior fiscal years, supplemental appropriations for the fiscal year ending June 30, 1923, and for other purposes, namely:

WAR DEPARTMENT

QUARTERMASTER CORPS

Sites for military purposes: For completion of acquisition of real estate as authorized by an Act approved March 8, 1922, entitled "An Act to amend the Army Appropriation Act, approved July 11, 1919, so as to release appropriations for the completion of the acquisition of real estate in certain cases and making additional appropriations therefore," as follows:

* * * * *

For quartermaster warehouses, Newport News, Virginia, $223,670.

III

POINTS

I. THE STATUTES AUTHORIZED AND DIRECTED THE SECRETARY OF WAR TO ACQUIRE THE LAND BY CONDEMNATION IF NECESSARY.

II. THE LAND WAS CONDEMNED FOR PUBLIC USE.

III. THE ACT OF MARCH 8, 1922, WHICH EXCLUDES THE RIGHT OF THE LAND COMPANY TO RECOVER COMPENSATION ON ACCOUNT OF ADDITION TO THE VALUE OF THE LAND RESULTING FROM THE IMPROVEMENTS MADE BY OR AT THE EXPENSE OF THE GOVERNMENT, IS A VALID EXERCISE OF CONGRESSIONAL POWER.

IV

ARGUMENT

I. THE STATUTES AUTHORIZED AND DIRECTED THE SECRETARY OF WAR TO ACQUIRE THE LAND BY CONDEMNATION IF NECESSARY

The Act approved March 8, 1922, was passed " so as to authorize completion of the acquisition of the real estate hereinafter specified in respect whereof requisition notices had been served or given before July 11, 1919, under section 10 of the Act approved August 10, 1917 (40 Stat. 276), or in respect whereof agreements had been made for purchase thereof, or proceedings begun for condemnation thereof " and " For the purpose of carrying out the provisions of this section the following amounts are hereby authorized to be appropriated, to wit: * * * for quartermaster warehouses, Newport News, Virginia, $223,670."

Section 3 provides " That the Secretary of War be, and he is hereby, authorized and directed, at the time of the expiration of the leases now held by the War Department covering the several tracts of land hereinbefore described, to enter into new contracts for the lease of such portions of said land as he deems necessary, and for such length of time as he deems advisable, to enable the War Department to remove all Government buildings and other property now located on said premises * * * *Provided, however,* That any addition to the value of the premises resulting from the improvements

thereto or in the vicinity thereof made by or at the expense of the United States shall be excluded from the sum paid to or recovered by the owners. Where the owner or owners of the property refuse or neglect to execute such conveyance and a reasonable time therefor has in the judgment of the Secretary of War expired, or where their title to the premises is in doubt, the Secretary of War may cause condemnation proceedings to be instituted for the acquisition of the title, in which proceedings any addition to the value of the premises resulting from improvements thereto or in the vicinity therefor made by or at the expense of the United States shall not be included in the award to the owners."

Here is an express declaration by the Congress " That the Secretary of War be, and he is hereby, authorized and directed " to do precisely what the Secretary of War did in this case. There is no charge that the Secretary of War or the Attorney General failed to proceed seasonably or regularly. The charge that this property was not taken for public use and the argument in support thereof is made against the Congress of the United States and its thoroughly considered and deliberate enactments.

The explicit designation, " for quartermaster warehouses, Newport News, Virginia, $223,670," and the broad power conferred upon the Secretary of War " so as to authorize completion of the ac-

quisition of the real estate hereinafter specified" is controlling and the words "in respect whereof requisition notices," etc., following the word "specified," are not intended as limitations or restrictions.

In other words, Congress would not have explicitly designated the property to be acquired, appropriated the exact sum of money to be used for the payment therefor, directed the Secretary of War to acquire it by purchase or condemnation, and then destroyed the whole plan with a restriction. Such a construction is a senseless construction and will not be tolerated by the courts.

Applying the well-known rule that general limitations or restrictions do not override specific provisions, the authority to acquire the land by condemnation is not only clear but it is mandatory on the Secretary of War.

United States v. *Chase*, 135 U. S. 255, 260, Mr. Justice Lamar:

> It is an old and familiar rule that, "where there is, in the same statute, a particular enactment, and also a general one, which, in its most comprehensive sense, would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment." *Pretty* v. *Solly*, 26 Bevan, 610, per Romilly, M. R.; *State* v. *Comm'rs of Railroad Taxation*, 37 N. J. Law,

228. This rule applies wherever an act contains general provisions and also special ones upon a subject, which, standing alone, the general provisions would include. Endlich on the Interpretation of Statutes, 560.

Townsend v. *Little,* 109 U. S. 504, 512, Mr. Justice Woods:

> The appellant contends, however, that as the deed executed by the mayor of Salt Lake City to Townsend was without witnesses as required by the general law of the Territory, it did not convey the legal title. But the act of the territorial legislature providing for the conveyance to occupants by the mayor of lands included in the town site did not require witnesses to his deed. It merely directed that "deeds of conveyance for the same shall be executed by the mayor of the city or town under the seal of the corporation." According to the well settled rule, that general and specific provisions, in apparent contradiction, whether in the same or different statutes, and without regard to priority of enactment, may subsist together, the specific qualifying and supplying exceptions to the general, this provision for the execution of a particular class of deeds is not controlled by the law of the Territory requiring deeds generally to be executed with two witnesses. *Pease* v. *Whitney,* 5 Mass. 380; *Nichols* v. *Bertram,* 3 Pick. 341; *The State ex rel. Fosdick* v. *Perrysburg,* 14 Ohio St. 472; *London, etc., Railway* v. *Wandsworth Board of Works,* Law

Rep. 8 C. P. 185; Bishop on the Written Laws, § 112 *a*. The deed of the mayor to Townsend having been executed in conformity with the special act was therefore valid and effectual to convey the legal title.

In re Rouse, Hazard & Co., 91 Fed. Rep. 96, 100, 101 (C. C. A.), Circuit Judge Jenkins:

> It is an elementary principle of construction that where there are in one act or in several acts contemporaneously passed specific provisions relating to a particular subject, they will govern in respect to that subject as against general provisions contained in the same act. See Suth. St. Const., § 158. (Citing numerous cases.) Our conclusion is that Congress having spoken specifically to the subject of priority of payment of labor claims, what it has said upon that subject expresses the particular intent of the lawmaking power, and that provision is not to be tolled or enlarged by any general prior or subsequent provision in that act. That which is given in particular is not affected by general words. So that the statute providing for the priority of payment of debts referred to in clause 5 must be construed to mean other debts and different debts than those specified in clause 4.

District Judge Groner said (Tr. 43):

> Taking those two acts in connection with the general authority given by the Condemnation Act of 1888 in which the Secretary of War or Secretary of the Treasury is au-

> thorized to condemn for the public use any properties which Congress may appropriate money to acquire and in such cases as in his discretion, he thinks such proceedings necessary for that purpose, I think there can be no doubt that there has been in this case the passage by Congress of the proper and necessary and sufficient laws to justify the acquisition by Congress of this particular property and I feel also that these particular acts sufficiently certify the character of use for which the property is desired.

The Circuit Court of Appeals, Circuit Judge Woods, said (Tr. 102, 296 Fed. Rep. 21, 22):

> It is first argued against the right of condemnation that it is not authorized but negatived by the Acts of March 8, and July 1, 1922. The acts do say that the appropriations are made for the "completion of the acquisition of real estate, etc.," giving thus the general indication that the appropriations were to be applied in payment of purchase money contracted for or to be ascertained by condemnation proceedings already begun or authorized. But this general provision must yield to the clearly expressed particular provision that the property to be acquired was the land "for the quartermaster warehouses at Newport News," although no proceedings for its acquisition had been instituted. Such clearly expressed meaning can not be altered by the tenor of preliminary committee reports or congres-

sional discussion. *United States* v. *Chase*, 135 U. S. 255, 262.

II. THE LAND WAS CONDEMNED FOR PUBLIC USE

On July 27, 1917, Newport News was established as a port of embarkation and debarkation. Twenty-one per cent of the total, or approximately 384,000, soldiers were handled through the port of debarkation during the operation of the return from the World War of the victorious American armies.[1]

Vast warehouse facilities were necessarily required for this extensive Army base. On this site alone the Government placed improvements at a cost aggregating $1,995,000; and when this suit was commenced twenty-one warehouses, railroad switches and sidings and other structures which had cost $1,522,000 remained. The transcript shows, and the course pursued by the Land Company will

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[1] Official Report, Chief of Transportation Service to Secretary of War, Fiscal year 1919, page 33.

The official records on file in the office of the Quartermaster General, War Department, show the following summaries concerning the activities at Newport News during the World War and demobilization, viz: (*a*) Embarked at Newport News from August, 1917, to October, 1918: Army personnel, 261,389; civilians, 118; total, 261,507. (*b*) Debarked at said port from November, 1917, to October, 1919: Army, Navy & Marine Corps personnel, 413,661; civilians, 3,193; total, 416,854. (*c*) Number of vessels carrying troops overseas, 83. (*d*) Number of voyages, 243. (*e*) Total cargo shipped from Newport News and vicinity from September, 1917, to June, 1919, 1,407,984 cubic tons. (*f*) Total cargo returned to Newport News and vicinity from November, 1918, to June, 1922, 237,677 cubic tons. (*g*) The cargo consisted chiefly of supplies for the Engineer Corps, the Quartermaster Corps, and Ordnance Department; also a considerable amount for the Medical Corps and smaller amounts for the Signal Corps, Air Service, Chemical Warfare Service, and miscellaneous other corps.

admit of no other interpretation, that the Land Company was seeking to get control in its own right and title of both improvements, and land held under leases to the Government which the Land Company was willing to make at what appears to have been nominal rentals. (Tr. 14–18, 35, 36.)

Citing certain proceedings and debates in Congress, opposing counsel contend that the Government filed the petition to condemn the lands not for a public use but in order to save itself and to prevent the improvements which were no longer of any use to the Government from passing into possession of the Old Dominion Land Company.

Courts have repeatedly held that debates and statements of members of legislative bodies are inadmissible to determine the intent and meaning of a statute which is plain on its face.

District of Columbia v. *Washington Market Co.*, 108 U. S. 243, 254, Mr. Justice Matthews:

> We see no ground of support for the suggestion of counsel, that Congress, by the act incorporating the Washington Market Company and fixing the terms for their use of the public property granted to them, established an irrevocable charitable trust for the poor of Washington city, and thereby disabled itself from authorizing any subsequent changes in the mode and conditions of that grant; nor are we willing to accept the debates that are reported as occurring in Congress at the time of the passage of the deficiency appropriation act of March 3d, 1873,

as evidence of the meaning of the clause on which the controversy in this case depends.

United States v. *Trans-Missouri Freight Association*, 166 U. S. 290, 318, Mr. Justice Peckham:

> Looking simply at the history of the bill from the time it was introduced in the Senate until it was finally passed, it would be impossible to say what were the views of a majority of the members of each house in relation to the meaning of the act. It cannot be said that a majority of both houses did not agree with Senator Hoar in his views as to the construction to be given to the act as it passed the Senate. All that can be determined from the debates and reports is that various members had various views, and we are left to determine the meaning of this act, as we determine the meaning of other acts, from the language used therein.
>
> There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. *United States* v. *Union Pácific Railroad Company*, 91 U. S. 72, 79; *Aldridge* v. *Williams*, 3 How. 9, 24, Taney, Chief Justice; *Mitchell* v. *Great Works Milling & Manufacturing Company*, 2 Story, 648, 653; *Queen* v. *Hertford College*, 3 Q. B. D. 693, 707.
>
> The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the

> speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed. (Cases cited, *supra.*) If such resort be had, we are still unable to see that the railroads were not intended to be included in this legislation.

Maxwell v. *Dow*, 176 U. S. 581, 601, 602, Mr. Justice Peckham:

> Counsel for plaintiff in error has cited from the speech of one of the Senators of the United States, made in the Senate when the proposed Fourteenth Amendment was under Consideration by that body, wherein he stated that among the privileges and immunities which the committee having the amendment in charge sought to protect against invasion or abridgement by the States, were included those set forth in the first eight amendments to the Constitution, and counsel has argued that this court should therefore give that construction to the amendment which was contended for by the Senator in his speech.
>
> What speeches were made by other Senators, and by Representatives in the House, upon this subject is not stated by counsel, nor does he state what construction was given to it, if any, by other members of Con-

gress. It is clear that what is said in Congress upon such an occasion may or may not express the views of the majority of those who favor the adoption of the measure which may be before that body, and the question whether the proposed amendment itself expresses the meaning which those who spoke in its favor may have assumed that it did, is one to be determined by the language actually therein used and not by the speeches made regarding it.

What individual Senators or Representatives may have urged in debate, in regard to the meaning to be given to a proposed constitutional amendment, or bill or resolution, does not furnish a firm ground for its proper construction, nor is it important as explanatory of the grounds upon which the members voted in adopting it. *United States* v. *Trans-Missouri Freight Association,* 166 U. S. 290, 318; *Dunlap* v. *United States,* 173 U. S. 65, 75.

In the case of a constitutional amendment it is of less materiality than in that of an ordinary bill or resolution. A constitutional amendment must be agreed to, not only by Senators and Representatives, but it must be ratified by the legislatures, or by conventions, in three fourths of the States before such amendment can take effect. The safe way is to read its language in connection with the known condition of affairs out of which the occasion for its adoption may have arisen, and then to construe it, if there be therein any doubtful expressions, in a way

> so far as is reasonably possible, to forward the known purpose or object for which the amendment was adopted. This rule could not of course, be so used as to limit the force and effect of an amendment in a manner which the plain and unambiguous language used therein would not justify or permit.

Congress acted in the public interest and its motives may not be challenged. Courts have repeatedly rejected arguments that improper motives may be imputed to legislatures and their members.

United States v. *Des Moines Navigation Co.*, 142 U. S. 510, 544, Mr. Justice Brewer:

> Where a bill sets out a series of facts constituting a transaction between two parties, a demurrer admits the truth of those facts and all reasonable inferences to be drawn therefrom, but not the conclusion which the pleader has seen fit to aver. And the fact which stands out conspicuously, is the resolution proposing settlement which passed the legislature of the State of Iowa in March, 1858. That act is beyond challenge. The knowledge and good faith of a legislature are not open to question. It is conclusively presumed that a legislature acts with full knowledge, and in good faith. It is true the bill alleges that its passage was induced by the navigation company, by false representations and threats of suits; but such an allegation amounts to nothing.

ee, also: Fletcher v. Peck, 6 Cranch. 87, 130, 131; Ex te McCardle, 7 Wall. 506, 514; Doyle v. Continental Insance Co., 94 U.S. 535, 541; McCray v. United States, 195 . 27, 59; Calder v. Michigan, 218 U.S. 591, 598; Weber Freed, 239 U.S. 325, 330; Caminetti v. United States, U.S. 470, 490; Hammer v. Dagenhart, 247 U.S. 251, 276

servable that each of the foregoing statutes relates to the Army or military establishment. On the Secretary of War was conferred the authority to acquire the lands. The titles to the several statutes all indicate that they relate to the military establishment.

Old Dominion Land Co. v. *United States,* 296 Fed. Rep. 21, 23 (C. C. A.), Circuit Judge Woods:

> We have before us one of these war investments of $1,522,000 in building warehouses and other structures on leased property valued by the jury at $129,700. At the time of the commencement of the condemnation proceedings the government had title to the warehouses and the right of removal, with one day in which to exercise the right. The defendant had no right whatever to the warehouses. Since the price of the land could not be agreed on, the only method of preventing an immense loss to the public and an immense unearned gain to the landowner was the condemnation of the land. To hold such a condemnation not to be for a public use would be to give away immense public treasure by a narrow and technical limitation of the meaning of " public use." Therefore, assuming that the condemnation was for the sole purpose of salvage of public treasure which would be saved in no other way, it was for a public use. This conclusion is in accord with the principle applied in Strickland *v.* Highland Boy Gold Mining Company, 200 U. S. 527; Hairston *v.* Danville & Western Railway Company, 208

U. S. 598; Brown *v.* United States, 263 U. S. 78.

Shoemaker v. *United States,* 147 U. S. 282, 297, Mr. Justice Shiras:

> In the memory of men now living, a proposition to take private property, without the consent of its owner, for a public park and to assess a proportionate part of the cost upon real estate benefited thereby would have been regarded as a novel exercise of legislative power.
>
> It is true that, in the case of many of the older cities and towns, there were commons or public grounds, but the purpose of these was not to provide places for exercise and recreation, but places on which the owners of domestic animals might pasture them in common, and they were generally laid out as a part of the original plan of the town or city.
>
> It is said, in Johnson's Cyclopædia, that the Central Park of New York was the first place deliberately provided for the inhabitants of any city or town in the United States for exclusive use as a pleasure ground, for rest and exercise in the open air. However that may be, there is now scarcely a city of any considerable size in the entire country that does not have, or has not projected, such parks.
>
> The validity of the legislative acts erecting such parks, and providing for their cost, has been uniformly upheld.

Brown v. *United States,* 263 U. S. 78, 81, Mr. Chief Justice Taft:

> The plaintiffs contend that the power of eminent domain does not extend to the taking of one man's property to sell it to another, that such an object can not be regarded as for a public use of the property, and, without this, appropriation can have no constitutional validity. The District Court held that the acquisition of the town site was so closely connected with the acquisition of the district to be flooded and so necessary to the carrying out of the project that the public use of the reservoir covered the taking of the town site. We concur in this view.

Hairston v. *Danville & Western Railway,* 208 U. S. 598, 605, 606, 608, 609, Mr. Justice Moody:

> The condemnation of land in this case has been held by the courts of Virginia to be authorized by the constitution and laws of that State, and we have no right to review that aspect of the decision. The law of Virginia permits no exercise of the right of eminent domain except for public uses. *Fallsburg Power Company* v. *Alexander,* 101 Virginia, 98; *Dice* v. *Sherman,* 59 S. E. Rep. 388. Therefore it must be assumed that this taking was held to be for public uses, although there was no specific finding of the fact, but only a general judgment of condemnation. The plaintiff in error, however, insists that the record in this case, which includes all the evidence, shows, unmistakably that the taking was for private uses and that the claim

by the railway company, that the spur track was designed in part for public uses, is no better than a colorable pretense. We assume that, if the condemnation was for private uses, it is forbidden by the Fourteenth Amendment. *Missouri Pacific Railway* v. *Nebraska,* 164 U. S. 403; *Fallbrook Irrigation District* v. *Bradley,* 164 U. S. 112, 161; *Traction Company* v. *Mining Company,* 196 U. S. 239, 251, 252, 260; *Clark* v. *Nash,* 198 U. S. 361, 369; *Strickley* v. *Highland Boy Mining Co.,* 200 U. S. 527.

* * * * *

But when we come to inquire what are public uses for which the right of compulsory taking may be employed, and what are private uses for which the right is forbidden we find no agreement, either in reasoning or conclusion. The one and only principle in which all courts seem to agree is that the nature of the uses, whether public or private, is ultimately a judicial question. The determination of this question by the courts has been influenced in the different States by considerations touching the resources, the capacity of the soil, the relative importance of industries to the general public welfare, and the long-established methods and habits of the people. In all these respects conditions vary so much in the States and Territories of the Union that different results might well be expected.

* * * * *

The uses for which the track was desired are not the less public because the motive

which dictated its location over this particular land was to reach a private industry, or because the proprietors of that industry contributed in any way to the cost.

We have considered the elaborate argument of counsel that the track was not intended for the use of the public generally, and that it could not, in fact, be so used, and are not convinced by it.

United States v. *Forbes,* 259 Fed. Rep. 585, 591, District Judge Henry D. Clayton:

> Certainly the facts alleged are no answer to the facts admitted or known to us all: That a military training camp was there at the time of the filing of the petition in this case; that this land was greatly needed for this purpose; that thousands of young men were trained there to be sent into battle, and many of them sacrificed their lives in obedience to the law and command of the United States. No one knew then when this war would end. Even on this good day we do not know that the war has ended. We hope and believe that it is over, but we are still waiting for the ascertainment and declaration that the war has been concluded. Moreover, no one can possibly know now whether war may not come again from a source other than Germany. The government was forced to spend millions of dollars on this and similar camp sites, for hospitals, warehouses, sewers, roadways, and many other things. Relying upon the assurance given in this statute that the Secretary of War could

cause all the interest in the lands to be condemned, many and valuable improvements, as I have said, were placed on these tracts, and like tracts in other places in the United States. To say now that the war has terminated, or is about to be terminated, and therefore the government must abandon its purpose to condemn these lands and dismiss the suit and forfeit all the improvements, would be a stupendous injustice to the government, and one which I do not think this act of Congress intended should be permitted.

In re Military Training Camp, 260 Fed. Rep. 986, 990, District Judge Waddill:

> The judicial question to be determined is whether the use for which it is proposed to take the property sought to be condemned is a public one or not. When that is done the judicial function is exhausted, and the extent to which property may be taken, or just how it will be paid for, rests in the legislative discretion; the court, however, to see that just compensation is made before the property is taken.
>
> The act of Congress under which the proceeding is inaugurated declares " training camps " to be one of the purposes for which condemnation proceedings may be commenced. That training camps are public purposes can not be questioned. *Shoemaker* v. *United States,* 147 U. S. 282, 298. It does not follow that the fact that the exact sum of money with which to pay for property may not be in hand is necessary to the main-

tenance of the proceeding. This is apparent from the fact that not infrequently specific sums may be named at which the property may be acquired. The allowance of a larger or smaller sum neither affects the legality of the proceeding nor the right of the citizen to receive what is justly due him. *Shoemaker* v. *United States,* supra, 147 U. S. 302; *In re Manderson* (C. C. A. 3d Circuit), 51 Fed. 501, 2 C. C. A. 490.

The court should be jealous in every case to see that the property is only taken upon just compensation being paid therefor, and the condemnation does not pass title until the land sought to be taken is paid for. The case of *United States* v. *Gettysburg Electric Ry. Co.,* 160 U. S. 668, 683, 684, and 685, will be of interest, as bearing on the necessity for an appropriation in the exercise of the right of condemnation.

United States v. *Gettysburg Electric Railway,* 160 U. S. 668, 679, 680, 683, Mr. Justice Peckham:

The really important question to be determined in these proceedings is, whether the use to which the petitioner desires to put the land described in the petitions is of that kind of public use for which the government of the United States is authorized to condemn land.

It has authority to do so whenever it is necessary or appropriate to use the land in the execution of any of the powers granted to it by the Constitution. *Kohl* v. *United States,* 91 U. S. 367; *Cherokee Nation* v.

Kansas Railway, 135 U. S. 641, 656; *Chappell* v. *United States*, 160 U. S. 499.

* * * * *

As just compensation, which is the full value of the property taken, is to be paid, and the amount must be raised by taxation where the land is taken by the government itself, there is not much ground to fear any abuse of the power. The responsibility of Congress to the people will generally, if not always, result in a most conservative exercise of the right. It is quite a different view of the question which courts will take when this power is delegated to a private corporation. In that case the presumption that the intended use for which the corporation proposes to take the land is public, is not so strong as where the government intends to use the land itself.

In examining an act of Congress it has been frequently said that every intendment is in favor of its constitutionality. Such act is presumed to be valid unless its invalidity is plain and apparent; no presumption of invalidity can be indulged in; it must be shown clearly and unmistakably. This rule has been stated and followed by this court from the foundation of the government.

Upon the question whether the proposed use of this land is a public one, we think there can be no well founded doubt. And also, in our judgment, the government has the constitutional power to condemn the land for the proposed use. It is, of course,

not necessary that the power of condemnation for such purpose be expressly given by the Constitution. The right to condemn at all is not so given. It results from the powers that are given, and it is implied because of its necessity, or because it is appropriate in exercising those powers. Congress has power to declare war and to create and equip armies and navies. It has the great power of taxation to be exercised for the common defense and general welfare. Having such powers, it has such other and implied ones as are necessary and appropriate for the purpose of carrying the powers expressly given into effect. Any act of Congress which plainly and directly tends to enhance the respect and love of the citizen for the institutions of his country and to quicken and strengthen his motives to defend them, and which is germane to and intimately connected with and appropriate to the exercise of some one or all of the powers granted by Congress must be valid. This proposed use comes within such description. The provision comes within the rule laid down by Chief Justice Marshall, in *McCulloch* v. *Maryland,* 4 Wheat, 316, 421, in these words: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adequate to that end, which are not prohibited but consist with the letter and spirit of the Constitution, are constitutional."

The end to be attained by this proposed use, as provided for by the act of Congress, is legitimate, and lies within the scope of the Constitution. The battle of Gettysburg was one of the great battles of the world. The numbers contained in the opposing armies were great; the sacrifice of life was dreadful; while the bravery and, indeed, heroism displayed by both the contending forces rank with the highest exhibition of those qualities ever made by man. The importance of the issue involved in the contest of which this great battle was a part can not be overestimated. The existence of the government itself and the perpetuity of our institutions depended upon the result. Valuable lessons in the art of war can now be learned from an examination of this great battlefield in connection with the history of the events which there took place. Can it be that the government is without power to preserve the land and properly mark out the various sites upon which this struggle took place? Can it not erect the monuments provided for by these acts of Congress, or even take possession of the field of battle in the name and for the benefit of all the citizens of the country for the present and for the future? Such a use seems necessarily not only a public use, but one so closely connected with the welfare of the republic itself as to be within the powers granted Congress by the Constitution for the purpose of protecting and preserving the whole country. It would be a great object lesson to all who

looked upon the land thus cared for, and it would show a proper recognition of the great things that were done there on those momentous days. By this use the government manifests for the benefit of all its citizens the value put upon the services and exertions of the citizen soldiers of that period. Their successful effort to preserve the integrity and solidarity of the great republic of modern times is forcibly impressed upon every one who looks over the field. The value of the sacrifices then freely made is rendered plainer and more durable by the fact that the government of the United States, through its representatives in Congress assembled, appreciates and endeavors to perpetuate it by this most suitable recognition. Such action on the part of Congress touches the heart, and comes home to the imagination of every citizen, and greatly tends to enhance his love and respect for those institutions for which these heroic sacrifices were made. The greater the love of the citizen for the institutions of his country the greater is the dependence properly to be placed upon him for their defense in time of necessity, and it is to such men that the country must look for its safety. The institutions of our country which were saved at this enormous expenditure of life and property ought to and will be regarded with proportionate affection. Here upon this battlefield is one of the proofs of that expenditure, and the sacrifices are rendered more obvious and more easily appreciated when such a battlefield is

preserved by the government at public expense. The right to take land for cemeteries for the burial of the deceased soldiers of the country rests on the same footing and is connected with and springs from the same powers of the Constitution. It seems very clear that the government has the right to bury its own soldiers and to see to it that their graves shall not remain unknown or unhonored.

No narrow view of the character of this proposed use should be taken. Its national character and importance, we think, are plain. The power to condemn for this purpose need not be plainly and unmistakably deduced from any one of the particularly specified powers. Any number of those powers may be grouped together, and an inference from them all may be drawn that the power claimed has been conferred.

It is needless to enlarge upon the subject, and the determination is arrived at without hesitation that the use intended as set forth in the petition in this proceeding is of that public nature which comes within the constitutional power of Congress to provide for by the condemnation of land.

See also Cooley's Constitutional Limitations (7th Ed.) 766, 767, 777; Lewis on Eminent Domain (3d Ed.), §§ 259, 369.

Reviewing the statutes and the petition to condemn, both the District Court and the Circuit Court of Appeals declined to sustain the contention of

the Land Company. District Judge Groner said (Tr. 43):

> Congress may be of the opinion at a later date that their view ought to prevail and that the property ought to be sold or leased or used for some purely commercial enterprise, some private purpose. It doesn't follow, however, necessarily that that will be the outcome. It may, on the contrary, have an entirely different point of view after the property is acquired. Exigencies may arise by which it may be necessary for the public use and until and unless Congress itself announces some determination from which a court may ascertain that the use is not a public use, particularly when the affirmative of that proposition is already stated by Congress, it seems to me it perhaps is not a subject which may be judicially reviewed. (Tr. 44.)

Circuit Judge Woods, speaking for the Circuit Court of Appeals, said (Tr. 102), "We do not think it appears that before the condemnation proceedings Congress had abandoned the purpose to use the property for the public purposes expressed in the statute," and that because the Secretary of War had been negotiating for the sale of the land and warehouses as surplus property not needed by the Government "does not justify the conclusion that the Government intends to sell the property." (Tr. 103.)

III. THE ACT OF MARCH 8, 1922, WHICH EXCLUDES THE RIGHT OF THE LAND COMPANY TO RECOVER COMPENSATION ON ACCOUNT OF ADDITION TO THE VALUE OF THE LAND RESULTING FROM THE IMPROVEMENTS MADE BY OR AT THE EXPENSE OF THE GOVERNMENT, IS A VALID EXERCISE OF CONGRESSIONAL POWER

The statute precludes the right of recovery for the value of the improvements which the Government placed upon the land at a cost of $1,522,000. Opposing counsel claim the statute violates the Fifth Amendment.

The verdict of the jury exceeds by only $400 the sum offered by General Carson which would indicate the price offered by the Government was reasonable. No claim is made that the award of the jury is inadequate for the land, minus the improvements. Neither the District Court nor the Circuit Court of Appeals appears to have had any hesitancy in sustaining the power of Congress, the action of the Secretary of War and the Attorney General, and the verdict of the jury.

United States v. *New River Collieries,* 262 U. S. 341, 345, Mr. Justice Butler:

> The owner was entitled to what it lost by the taking. That loss is measured by the money equivalent of the coal requisitioned.

Consolidated Turnpike v. *Norfolk & Ocean View Railway Company,* 228 U. S. 596, 602, Mr. Justice Lurton:

> It was not necessary to acquire any right, title or interest which belonged to the Turnpike Company. Its title and right had been

theretofore acquired through its deed, and all that was sought to be condemned was such right, title and interest as was in Taylor, Trustee. That was subject to condemnation, and the single question which was or is debatable is whether the Bay Shore Company, which had entered under that deed, might condemn the mortgagee interest without paying for its own improvements.

The rule of the common law, to which the plaintiffs in error refer, that fixtures annexed to realty become a part thereof and subject to existing liens thereon, is one subject to many exceptions. One of these is that applied by the Virginia court, namely, that when a corporation possessing the right of eminent domain enters upon lands necessary for its public purposes, under the deed of a mortgagor in possession, and places permanent improvements thereon in good faith, it may later condemn the interest and title of the mortgagee without being required to pay more than the value of the land without the improvements placed thereon with intent to acquire the entire title. *Searl* v. *School District,* 133 U. S. 553, 561; *St. Johnsbury &c. Rd.* v. *Willard,* 61 Vermont 134; *Jones* v. *N. O. Rd. Co.,* 70 Alabama 232; *Justice* v. *Valley &c. Rd. Co.,* 87 Pa. St. 28; 2 Lewis Em. Dom., § 759, 3d ed.

United States v. *Chandler-Dunbar Co.,* 229 U. S. 53, 76, Mr. Justice Lurton:

Having decided that the Chandler-Dunbar Company as riparian owners had no such

vested property right in the water power inherent in the falls and rapids of the river, and no right to place in the river the works essential to any practical use of the flow of the river, the Government cannot be justly required to pay for an element of value which did not inhere in these parcels as upland. The Government had dominion over the water power of the rapids and falls and cannot be required to pay any hypothetical additional value to a riparian owner who had no right to appropriate the current to his own commercial use. These additional values represent, therefore, no actual loss and there would be no justice in paying for a loss suffered by no one in fact. "The requirement of the Fifth Amendment is satisfied when the owner is paid for what is taken from him. The question is what has the owner lost, and not what has the taker gained." *Boston Chamber of Commerce* v. *Boston,* 217 U. S. 189, 194, 195.

In *Old Dominion Land Co.* v. *United States,* 296 Fed. Rep. 21, 23, Circuit Judge Woods said (Tr. 104):

> The District Court charged the jury that they should take into consideration all elements entering into the value of the land, including the surrounding improvements. Error is assigned in the instruction that they were not to include the value of the warehouses and other structures put on the land by the Government. Under the terms of the lease the Government owned the ware-

houses, with the right of taking them away or destroying them. The defendant had no interest in them. Evidently, therefore, the defendant had no right to receive payment from the Government for its own property. The case is much stronger against the defendants than *Consolidated Turnpike Co.* v. *Norfolk & Ocean View Railway Co.*, 228 U. S. 596, wherein the owner of the land was denied the value of improvements placed upon it.

In *Pearson* v. *United States*, No. 264, this Term (Mr. Justice Sanford, March 2, 1925), this Court affirmed the judgment of the Court of Claims which dismissed petition filed to recover the value of improvements placed on the lands by the Government and removed by its officers and agents after the expiration of the terms of the lease and the right of the Government of occupation and of entry. The Court held the Government had not contracted to pay for the value of the improvements to the owner.

V

CONCLUSION

The judgment of the Circuit Court of Appeals affirming the judgment of the District Court should be affirmed.

JAMES M. BECK,
Solicitor General.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

MARCH, 1925.

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